

DELEGATE DORSEY: Mr. President, my good friend Judge Henderson, for whom I have the highest respect, said that over 100 years ago the Supreme Court of the United States laid down the rule that in federal courts the jury could not be the judge of the law and the fact. Although that decision was made over a hundred years ago, this system has operated in Maryland, and although the Supreme Court has changed the procedure and asked the courts many, many times and, indeed, greatly in recent years, it has not yet stricken down this system of justice which has worked so well in Maryland.

Over 100 years ago, Bishop, who was one of the great law writers—and his work on criminal law is still regarded as one of the greatest works ever written in this country—in a section in one of the earlier editions of that volume says: "No man should be convicted if a public good will not be done thereby." It is because of that this system which we have had in Maryland has permitted juries for over a hundred years not to render a verdict on a technicality where a judge would be bound to lay down what would amount to a directed verdict of guilty, but it has given to the jury an opportunity to have the last say and not to convict on a mere technicality. I say this system has worked in Maryland for over 100 years.

I agree with my good friend Judge Henderson that there was little case law until 1950, when this section was changed to permit courts to direct verdicts concerning the defendant in criminal cases. This has brought about a great deal of case law in criminal cases since it was adopted in 1950.

I say, Mr. President—

THE PRESIDENT: You have one-half minute.

DELEGATE DORSEY: I say that for over 100 years this system has worked in Maryland. There have been numerous attempts to change it through the legislature, but it has prevailed, and I think that this Convention should retain this section of the old Constitution in the new one.

THE PRESIDENT: Delegate John Hargrove.

DELEGATE HARGROVE: Mr. Chairman, I hate to disagree with my friend Judge Dorsey, but I have tried a great many criminal cases, as you probably know, both in the federal court and the state court, and this system does not work very well. It is really a fraud on both the

State and the defendant. A jury is given whatever laws the state's attorney or the attorney for the defendant desires to give them; whichever side favors their position, the jury is given.

I have not seen in all my experience — and I have tried a considerable number of jury cases — any twelve people brought together, selected at random, who could comprehend the law as it is today.

I would like to add to the list of people who are condemning this constitutional practice. In addition to Judge Henderson, the former chief judge of the Court of Appeals, I have a memorandum from Judge Brune, who, although not speaking for the Commission on Criminal Law, of which I am a member, clearly states that this is an anachronism and should be eliminated. I can say as a member of that Commission, which has been studying criminal law for two years, that we did not take a vote simply because the Constitutional Convention Commission did not put this anachronism in the draft, and therefore we felt it should be put to rest. There were only two people on that Commission who desired this to remain in the constitution, of some twelve or fourteen people on the Commission.

I would like to make one more statement. The other day it was said that in the federal courts the judges can direct a verdict of guilty. I served in those courts for close to several years, as several members of this delegation have, and I have never seen that happen nor can it happen in the federal court.

The presumption of innocence and the right to trial by jury is so strong in that court no judge would dare direct a verdict of guilty in the federal court. In my experience over many, many cases I have never seen it happen, and I am sure that there are other delegates here who served in that body and know that it does not happen. It just does not happen. We should put this to rest. We voted on the seven dates. We should reject the motion to reconsider.

THE PRESIDENT: Delegate Mentzer.

DELEGATE MENTZER: I would like to move the previous question.

THE PRESIDENT: The previous question has been moved.

*(The motion was duly seconded.)*

THE PRESIDENT: The previous question has been moved. All those in favor